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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1398

GEORGE J. LAMBERT,
PETITIONER,

v.

PROVIDENCE JOURNAL COMPANY,
RESPONDENT.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

The petition for certiorari presents questions (Petition at p. 2) that ignore the reasoning of the decision rendered in the United States Court of Appeals for the First Circuit (Petition Appendix A). The questions considered by the Court of Appeals in its opinion were (1) whether the articles in question were capable of a defamatory meaning *as a matter of state law,* (2) whether the standards set forth by this Court in *New York Times* v. *Sullivan,* 376

U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) applied, and (3) whether there was an issue of material fact concerning those standards. Because the Court of Appeals decided the first question in Respondent's favor, the second and third were not even discussed (Petition at p. 5a).

Ignoring those questions, Petitioner's argument for granting certiorari rests, first, on his claim that the grant of Respondent's motion for summary judgment by the United States District Court for the District of Rhode Island without oral argument or a jury trial was such a variation from usual and accepted procedures as to call for this Court to exercise its powers of supervision (Petition at p. 2). According to Petitioner, Rhode Island and Massachusetts law on libel and, by analogy, the principles concerning the determination whether someone is a public figure set down in *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997 (1974), require that a jury determine whether the articles were capable of any defamatory meaning (Petition at pp. 5-7). However, Petitioner misconstrues applicable state law and his reliance on *Gertz, supra,* is therefore irrelevant. Second, Petitioner argues that the Court of Appeals decision conflicts with standards set out by this Court in *New York Times, supra, Rosenbloom* v. *Metromedia, Inc.*, 403 U.S. 29, 91 S.Ct. 1811, 29 L.Ed.2d 296 (1971), and *Gertz, supra,* and that libel law standards require clarification. Since the articles are not capable of any defamatory meaning, this question is never reached.

The action of the District Court, as affirmed by the Court of Appeals, was clearly sound and proper and in accordance with applicable state law. Respondent urges that this Court deny the Petition for Certiorari because there is no showing that the action of the District Court,

and the affirmance thereof by the Court of Appeals, was so substantially in error to require this Court to exercise its supervisory powers.

Statement of Facts

Petitioner's Statement of Facts (Petition at pp. 2-4) is satisfactory in all but two important respects.

First, Petitioner neglects to note that he admitted on deposition the substantial truth of all of the material facts of Respondent's articles, including the accuracy of the articles insofar as they relate to the charges filed against him and the fact that he did shoot and kill McCabe. The District Court found the articles to accurately reflect the incident which occurred (Petition at p. 13a) basing its finding in part on these admissions in Lambert's deposition (Petition at p. 31a). The Court of Appeals also acknowledged the admitted truthfulness of the published articles (Petition at p. 5a).

Second, Petitioner inaccurately describes Petitioner's Complaint as alleging that Respondent "maliciously published [such] libelous statements by stating that Plaintiff had murdered one Thomas McCabe and that in doing so he had committed 'an actual murder' (Footnote 5, Appendix B, p. 26) and further that Thomas McCabe was a murder victim" (Petition at p. 3). None of the articles state that Lambert "murdered" McCabe. The articles only use the word "murder" to describe, correctly, the charges filed against Lambert or to modify the word "victim" in reference to McCabe. Lambert alleged that the articles were *understood to mean* that a murder was committed of which he was guilty. This is what the Court of Appeals correctly understood as the essence of his claim (Petition at p. 5a, Footnote 5).

Reason for Denying the Petition

THE DISTRICT COURT'S GRANT OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND THE COURT OF APPEALS DECISION AFFIRMING THAT ACTION WERE PROPER EXERCISES OF JUDICIAL POWER IN ACCORDANCE WITH STATE LAW.

Petitioner grounds his argument that the District Court acted improperly on an incorrect understanding of Rhode Island and Massachusetts law which the District Court and the Court of Appeals accurately perceived and followed. Petitioner correctly summarized that law as holding "that unless the words used by the Providence Journal were plain and unambiguous and incapable of carrying a defamatory innuendo there is a question of fact for the jury" (Petition at pp. 5-6). However, Petitioner then argues that the unrebutted testimony of three individuals shows that the language is capable of carrying defamatory meaning and therefore a factual question exists. This is a superficial, and as a result incorrect, analysis of the law regarding libel.

The law in question contemplates two steps in the determination of whether language is defamatory by innuendo. First, the Court must decide if the language is capable of defamatory meaning. This is analogous to the decision-making process that takes place when a judge grants a directed verdict or a judgment notwithstanding the verdict, and in so doing determines that certain evidence cannot or does not, as a matter of law, sustain a verdict. Only if a Court finds a defamatory meaning possible does the question of fact arise whether the language was actually understood to be defamatory. As a logical matter, the first step must take place if courts are ever to grant summary judgment in libel matters.

In addition, if Petitioner was correct, there would be an enormous chilling effect on the exercise of First Amendment rights. Any person could force a trial in a libel action by merely submitting affidavits of individuals stating that, notwithstanding what the actual language states, the language was understood by that individual to have a defamatory meaning. This Court has recognized the deterring affect on free speech created by the burden of full litigation. See *New York Times* v. *Sullivan, supra,* at p. 279.

Petitioner cites the case of *Della Posta* v. *Rand Express Freight Lines,* 86 R.I. 148, 133 A.2d 775 (1957), to support his contention that it is a jury question whether language is capable of any defamatory meaning. The Rhode Island Supreme Court said in that case:

> ". . . Where the language complained of is plain and unambiguous it is for the court to say whether or not it is slanderous." *Della Posta* v. *Rand Express Freight Lines, supra,* at p. 154.

Though the *Della Posta* case did not deal with libel by innuendo, the principle espoused is that the Court must make an initial determination of whether the language is capable of a defamatory meaning or is defamatory per se. Where the alleged libel is written, only the articles themselves are relevant to a Court's initial evaluation and individual opinions of members of the community are not. Only when a defamatory meaning is possible, as a matter of law, is a case submitted to the jury. Otherwise, Rhode Island and Massachusetts Courts will grant the defendant a summary judgment in its favor. See, for Rhode Island law, *Bray* v. *Providence Journal Co.,* 101 R.I. 111, 220 A.2d 531 (1966), *Connery* v. *Kalian,* 99 R.I. 60, 205 A.2d 587 (1965), *Ogrodnick* v. *Providence Journal Co.,* 93 R.I.

316, 175 A.2d 289 (1961), *Reid* v. *Providence Journal Co.*, 20 R.I. 120, 37 Atl. 637 (1897), and *Hackett* v. *Providence Telegram Publishing Co.*, 18 R.I. 589, 29 Atl. 143 (1894), and, for Massachusetts law, *Sharratt* v. *Housing Innovations, Inc.*, 310 N.E.2d 343 (Supreme Jud. Ct. of Mass., 1974), *Joyce* v. *George W. Prescott Publishing Co.*, 348 Mass. 790, 205 N.E.2d 207 (1965), *Ricci* v. *Crowley*, 333 Mass. 26, 127 N.E.2d 652 (1955), and *King* v. *Northeastern Pub. Co.*, 294 Mass. 369, 2 N.E.2d 486 (1936).

The grant of Respondent's motion for summary judgment by the District Court was a proper and sound exercise of judicial power. No oral argument or jury trial was necessary. This Court therefore has no reason to exercise its supervisory powers.

Moreover, the District Court and the Court of Appeals were correct on the merits in their decisions. The Court of Appeals concisely stated the issue in this case and its ruling thereon:

> "Even if the use of the term 'murder' implied that the killing was unlawful, each article unequivocally states that Lambert has 'denied' the murder charge or 'pleaded innocent,' or reports the progress of the case in such a way as to make clear that no determination of his involvement has been made. Nothing in them suggests that the Journal has concluded that Lambert is the guilty party even if it has decided that there was a murder (footnote omitted). Moreover, the term 'murder' is used interchangeably throughout with the terms 'fatal shooting,' 'shooting death,' and 'homicide,' often in the same or adjacent sentences. In this context the term clearly is chosen solely for variety's sake and merely echoes the report of the charges levelled against Lambert without implying their truthfulness. It is obviously to be understood

as 'alleged murder.' In these routine news articles we think it would require more forceful language than this to justify Lambert's reading.[8] The innuendo cannot be used to enlarge the natural meaning of the words actually used. *Ogrodnick* v. *Providence Journal Co.*, 93 R.I. 316, 317, 175 A.2d 289, 291 (1961); *Colby Haberdashers, Inc.* v. *Broadstreet Co.*, 267 Mass. 166, 170, 166 N.E. 550, 551 (1929). None of these articles can be construed to impute guilt without such an enlargement."

"[8] The context shows that the single use of the phrase 'actual murder' in the last article served to distinguish the murder charge from the earlier accessory charge and could not be read to assert the conclusion that the killing was unlawful. (Petition Appendix B, pp. 6a-7a)."

Conclusion

This Court should deny certiorari because the Petitioner has made no clear showing of procedural error and there is no need to reach any questions of clarification of case law relating to libel actions.

Respectfully submitted,

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